

ENTERED

November 07, 2016

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
V.	§	CRIMINAL NO. H-16-426
	§	
GABRIEL CERVANTES-CARRIZALEZ	§	

REPORT AND RECOMMENDATION

Before the court, by referral pursuant to 28 U.S.C. §636(b), is the matter of the re-arraignment of Gabriel Cervantes-Carrizalez, the defendant in this action. On November 4, 2016, Defendant Gabriel Cervantes-Carrizalez appeared with counsel before the undersigned magistrate judge for the purpose of entering a guilty plea to the Indictment charging him with illegal reentry into the United States after deportation and after conviction of an aggravated felony, in violation of 8 U.S.C. §§ 1326(a) and (b)(2).

Defendant Gabriel Cervantes-Carrizalez consented in writing to plead guilty before a United States Magistrate Judge. After conducting said proceeding in the form and manner prescribed by Rule 11 of the Federal Rules of Criminal Procedure, this court makes the following findings of fact:

1. Defendant Gabriel Cervantes-Carrizalez, after consultation with counsel of record and with the approval of the government, has knowingly and voluntarily consented to be advised of his rights and to enter a plea of guilty before a U.S. Magistrate Judge subject to final approval and imposition of sentence by United States District

Judge Lee Rosenthal.

2. Defendant Gabriel Cervantes-Carrizalez is fully competent and capable of entering an informed plea.
3. Defendant Gabriel Cervantes-Carrizalez is aware of the nature of the charges, the maximum punishment range and other penalties that may be imposed at sentencing.
4. Defendant Gabriel Cervantes-Carrizalez understands his constitutional and statutory rights and wishes to waive those rights.
5. Defendant Gabriel Cervantes-Carrizalez understands that the sentencing judge is not bound by any recommendation on sentencing made by either counsel for the government or counsel for the defendant, and that if a recommendation on sentencing is not followed by the sentencing judge, he may not withdraw his plea of guilty.
6. Defendant Juan Jose Lizcano's plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense charged in Count 1 of the Indictment. Defendant reserves the right to challenge the characterization of his prior conviction as an aggravated felony at sentencing.

Based upon the foregoing, it is **RECOMMENDED** that the guilty plea of Defendant Gabriel Cervantes-Carrizalez to Count 1 of the Indictment be accepted by the court and that Gabriel Cervantes-Carrizalez be adjudged guilty of the offense alleged in Count 1 of the Indictment, to wit: illegal re-entry into the United States after deportation and after conviction of an felony, in violation of 8 U.S.C. §§ 1326(a) and (b)(1), and/or (b)(2) with the understanding that Defendant reserved his right to challenge the characterization of his felony conviction at sentencing.

The Clerk shall send copies of this Report and Recommendation

to the respective parties who have fourteen (14) days from the receipt thereof to file written objections thereto pursuant to General Order 2002-13. Failure to file written objections within the time period mentioned shall bar an aggrieved party from attacking the factual findings and legal conclusions on appeal.

The original of any written objections shall be filed with the United States District Clerk, P.O. Box 61010, Houston, Texas, 77208. Copies of such objections shall be mailed to opposing parties and to the chambers of the undersigned, 515 Rusk, Suite 7019, Houston, Texas 77002.

SIGNED at Houston, Texas, this 4th day of November, 2016.



U.S. MAGISTRATE JUDGE